

American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5652 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Ex Parte No. 241, Rule 19, Revised
Exemption No. 155, Amdt. No. 3]

ALL RAILROADS

Exemption Under Mandatory Car Service Rules

Upon further consideration of Revised Exemption No. 155 issued January 19, 1979.

It is ordered. That under the authority vested in me by Car Service Rule 19, Revised Exemption No. 155 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, is amended to expire February 23, 1979.

This amendment shall become effective February 9, 1979.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5655 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to I.C.C. Order No. 24 Under
Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 24 and good cause appearing therefor:

It is ordered.

I.C.C. Order No. 24 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this

amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5653 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 2 to I.C.C. Order No. 22 Under
Service Order No. 1344]

Rerouting Traffic

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Upon further consideration of I.C.C. Order No. 22, and good cause appearing therefor:

It is ordered.

I.C.C. Order No. 22 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement, under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5654 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Amdt. No. 1 to Revised I.C.C. Order No. 21
Under Service Order No. 1344]

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Rerouting Traffic

Upon further consideration of I.C.C. Order No. 21, and good cause appearing therefor:

It is ordered.

I.C.C. Order No. 21 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., February 23, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., February 9, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 8, 1979.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-5647 Filed 2-23-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28499 (Sub-No. 1)]

NORFOLK AND WESTERN RAILROAD CO. AND BALTIMORE AND OHIO RAILROAD—CON- TROL—DETROIT, TOLEDO AND IRONTON RAILROAD CO.

[Finance Docket No. 28676 (Sub-No. 1)]

GRAND TRUNK WESTERN RAILROAD—CON- TROL—DETROIT, TOLEDO, AND IRONTON RAILROAD CO. AND DETROIT AND TOLEDO SHORELINE RAILROAD CO.

Decided: January 23, 1979.

We have considered the petition filed December 18, 1978, by Michigan Interstate Railway Company (MI), a designated operator of the Ann Arbor Railroad System, seeking discovery of certain information or, in the alternative, waiver of certain material required by sections 1111.1(b)(1) thru (6), 1111.1(c)(1) thru (12), 1111.1(d)(4) thru (8), and 1111.2 of the *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Tackage Rights and Lease Procedures*, 49 C.F.R. part 1111 (1977) (Railroad Consolidation Procedures), and postponement of the filing date in which to file its trackage rights applications.¹

MI intends to file, in this proceeding, on or about January 15, 1979, applications under 49 U.S.C. 11343 (formerly section 5(2) of the Interstate Commerce Act) requesting trackage rights over specified routes of the Detroit, Toledo and Ironton Railroad Company (DT&I), Baltimore and Ohio Railroad Company (Chessie System), and the Grand Trunk Western Railroad (GTW), as a condition to approv-

¹We have accepted and considered the separate reply petitions filed January 9 and 10, 1979, by Norfolk and Western Railroad Company, Baltimore and Ohio Railroad Company, Detroit, Toledo and Ironton Railroad Company, and Pennsylvania Company, jointly, and by Grand Trunk Western Railroad Company, respectively.

al of either of the proposed applications for control of DT&I. On August 15, 1978, Administrative Law Judge Richard H. Beddow, Jr., instructed counsel for MI to submit for the September, 1978, hearings a formal pleading requesting trackage rights. On December 11, 1978, the Administrative Law Judge, not recalling the September deadline, (1) permitted MI to file the petition here by December 18, 1978, (2) ruled that the proposed applications will be presumed major market extensions, and (3) set January 15, 1979, as the final date for filing the applications.

49 C.F.R. sections 1111.1(b)(1) thru (6) require MI to provide information respecting identification of applicant to the trackage rights. Petitioner MI indicates that with respect to DT&I, the Chessie System, and GTW, this information is already in the record in these proceedings. Accordingly, MI should incorporate by reference this material to its application. Petitioner makes no allegation that it cannot provide this information about itself. In our opinion, therefore, petitioner has not shown good cause for granting the requested waiver of these sections.

49 C.F.R. sections 1111.1(d)(4) thru (8) require certain information respecting the nature of the transaction proposed and the term and conditions thereof. Section 1111.1(d)(4) requires information on any financial or other relationship, direct or indirect, not disclosed in responses to prior instructions existing at the present time between applicants and other parties and affiliates involved in the proposed transaction. Petitioner alleges that this information concerning DT&I, the Chessie System, and GTW are all matters exclusively within their respective knowledge. Petitioner states further that the information on these three carriers is already in the record. MI should, therefore, incorporate by reference this material concerning these three carriers to its application. Petitioner makes no allegation that it cannot provide this information about itself. In our opinion, petitioner has not shown good cause for a waiver of the requirements of section 1111.1(d)(4).

Section 1111.1(d)(5) requires route, termini and mileage data of all involved lines, and the principle points of interchange, with the main line mileage and branch line mileage shown separately. Petitioner alleges that this material is not in the record in a form suitable for consideration of the trackage rights application. The information that MI needs to comply with section 1111.1(d)(5) can be found in its own file and in the application of the N&W/Chessie or GTW (Exhibit A-13). Therefore, good cause has not

been shown for a waiver of the requirements of section 1111.1(d)(5).

Section 1111.1(d)(6) requires a description of the property of the applicant included in the proposed transaction. The information MI needs to comply with this section can be found in its own file and in the applications of the N&W/Chessie and GTW. Therefore, good cause has not been shown for waivers of this section.

Section 1111.1(d)(7) requires valuation data of the property involved in the proposed transaction. Petitioner states that it is not in a position to provide this information because it is probably not in the record in a form suitable for consideration of the trackage rights application to be filed. Records on this information are not readily available to MI. Thus, it would be an undue burden to require MI to make an independent appraisal of the properties. Similarly, it would be an undue burden to require DT&I, the Chessie System, and GTW to research their records on valuation of these properties. In our opinion, petitioner has shown good cause for granting the requested waiver.

Section 1111.1(d)(8) requires a statement of the policy and practice followed by applicant with respect to reserves for depreciation and similar reserves, including rates by class of property. To the extent that this information is already in the record in these proceedings, MI should incorporate by reference this material to its application; we will require DT&I, the Chessie System and GTW, upon a request pursuant to section 1100.60 of the *General Rules of Practice*, to promptly provide this information not in the record to MI. Petitioner makes no allegation that it could not provide this information about itself. In our opinion, therefore, petitioner has not shown good cause for a waiver of the requirements of this section.

49 C.F.R. sections 1111.2(a) (1) thru (12) (Exhibits 1-12) detail the exhibits to be filed in all applications pursuant to the consolidation procedures. Exhibits 1 and 2 require articles of incorporation, by laws, amendments, and annual report data of each applicant. This information on the DT&I, GTW, and Chessie System is already in the record and should, therefore, be incorporated by reference by MI in its application. Petitioner makes no allegation that it cannot provide this information about itself. Therefore, petitioner has not shown good cause for waiver of the requirements of Exhibits 1 and 2.

Sections 1111.2(a) (3), (4) and (7) (Exhibits 3, 4 and 7) require, among other things, directors' and shareholders' resolutions of DT&I, GTW, the Chessie System, and MI. Petitioner alleges that it cannot supply these reso-

lutions because the other corporations have not yet considered or written such documents. Petitioner states further that waiver of the requirement to furnish this information is justified under *Istel Corporation-Control-Green Bay and Western*, 354 I.C.C. 232 (1978). In similar circumstances, the Commission ruled in the present proceeding that such resolutions and opinions of counsel were not required for DT&I in the NW/B&O application nor for DT&I and DTSL in the GTW inconsistent application. In our opinion, petitioner has shown good cause for granting the requested waiver.

Section 1111.2(a)(8) (Exhibit 8) requires a general or key map indicating the line or lines of applicant or parts of the line of each applicant in their true relation to each other. Petitioner states that in order to comply with this section it must have detailed maps from DT&I, GTW, and Chessie. The application of GTW in this proceeding has detailed maps of the DT&I and GTW. Therefore, this information is readily available to MI. The NW/Chessie application does not show the B&O lines which MI is requesting trackage rights over. However, there are several public sources, such as the *Official Railroad Guide*, which show the entire Chessie System. Therefore, MI could comply with Exhibit 8 without the Commission requiring the parties to supply the information. Accordingly, petitioner has not shown good cause for a waiver of the requirements of this section.

Section 1111.2(a)(10) (Exhibit 10) provides for employment and work force information. MI alleges that all of the information required by this exhibit to the extent it relates to either DT&I, GTW and the Chessie System should be provided to MI by such parties because this information is exclusively within the control of such other parties. The application of GTW and N&W/Chessie already provide most of this information as it relates to those carriers. Therefore, MI could comply with Exhibit 10 with the Commission requiring the parties to supply the information. Petitioner makes no allegation that it cannot provide this information about its own employment and work force and the effects these trackage rights will have on its own employees. Accordingly, petitioner has not shown good cause for a waiver of the requirements of this section.

49 C.F.R. section 1111.2(b)(1) (i) thru (iii) (Exhibit A-13) require MI to provide gross ton mile traffic density charts, revenue carload interchange data between applicant and connecting line-haul rail carriers or water carriers, and revenue carload origin and destination data for the latest available full calendar year preceding the filing of the application. By decision

served August 25, 1978, the Commission ruled that *all traffic data* submitted in this proceeding cover the period May 1, 1976, to April 30, 1977. To prevent undue hardship on potential protestants to the transaction, notice of this time requirement was published in the *FEDERAL REGISTER*. The applications of GTW and N&W/Chessie include Exhibit A-13 information as it relates to those carriers and the DT&I for this time period. Therefore, MI can incorporate by reference this material into its applications. However, it is impossible for MI to supply this information with respect to its operations inasmuch as during the period April 1, 1976, through September 30, 1977, the Ann Arbor was operated by Conrail which is not a party to this proceeding. MI states that it can supply this information for calendar year 1978. Therefore, although it is extremely difficult to compare this data for different time periods, the Commission will accept data for calendar year 1978 for Exhibit A-13 as it relates to MI's operation of the Ann Arbor. Accordingly, good cause has not been shown for waiver of Exhibit A-13, except as mentioned above.

49 C.F.R. sections 1111.2(b)(2) (i) thru (iv) (Exhibit A-14) require MI to provide separate tables showing for the 10-year period preceding the filing of the trackage rights application specified data related to freight car fleet cars owned and leased by applicant, applicant's revenue freight traffic, commodity group revenue, and commodity group tonnage. For each of the above items, MI is also required to prepare similar data for class I railroad subsidiaries and predecessor railroads. Petitioner states that this data, as it relates to DT&I, Chessie, and GTW, is not in its possession. However, the applications of GTW and N&W/Chessie include Exhibit A-14 information as it relates to those carriers and the DT&I, and may be incorporated by reference in the MI application.

Petitioner indicates that it can provide the data requirements for Exhibit A-14 about itself only for calendar year 1978 because, as mentioned above, Conrail and DT&I have this data for the periods prior to September 30, 1977. Absence of this data for the full ten-year period will not materially affect the disposition of MI's application; therefore, the Commission finds good cause for waiver of the ten-year requirement and will accept data for calendar year 1978 for Exhibit A-14 as it relates to MI. Accordingly, no good cause for granting the requested waiver, except as mentioned above, has been shown by petitioner.

49 C.F.R. 1111.2(b)(3) (i) thru (vii) (Exhibit A-15) require MI to provide a copy of a traffic study detailing esti-

mated gains in traffic and revenues expected to result from the consummation of the proposed trackage rights transaction. MI states that preparation of this exhibit requires abstracts of interline settlements and waybills showing all traffic originating, terminating, and overhead to the particular line segments involved in the transaction from DT&I, GTW, and the Chessie System. This information is in the record of this proceeding. Two copies of the waybill abstracts relied upon by GTW and N&W/Chessie for their A-15 traffic studies are on file with the Commission. In addition, a copy of these abstracts is maintained at the headquarters of GTW and Chessie and will be made available, upon request, to parties in the proceeding. In our opinion, MI has not shown good cause for granting waiver of Exhibit A-15.

49 C.F.R. 1111.2(d) (1) thru (3) (Exhibits C-13, C-14, and C-15) provide that MI submit (a) specified information and data, projected 3 years following the consummation of the proposed transaction, describing various aspects of the operating plan, (b) general balance sheets of applicants DT&I, GTW, Chessie, and MI, and their respective parent company on a corporate entity basis, and (c) income statements of MI as lessee on a corporate entity basis. Petitioner MI states that with respect to items (i), (ii), (iv), (v), and (vi), of Exhibit C-13, the DT&I, GTW and Chessie should be required to furnish MI with their train schedules, numbers of trains per day operated each way and the size of existing trains, by weight and number of cars, for each of the line segments over which trackage rights are proposed. To comply with item (iii) of Exhibit C-13, MI requests detailed descriptions of each of the yards and interchange points located on or at the termini of the line segments over which trackage rights are sought. With respect to exhibits C-14 and C-15, MI states that the balance sheets and income statements for DT&I, the Chessie System, and GTW, giving effect to the proposed transaction, cannot be prepared. MI also implies that these exhibits require projections. Much of the information for preparing exhibits C-13, C-14, and C-15 is in the applications and exhibits of GTW and N&W/Chessie. Exhibit A-13(i) to the primary and inconsistent applications contain traffic density data MI can use to comply with Exhibit C-13(ii). GTW's Exhibit A-16 sets out train schedules, number of trains operated per day and major yard facilities. Exhibit A-17 (i) and (v) to the primary and inconsistent applications contain information for Exhibit C-14. Exhibit C-15 requires that MI only supply income statements; we will require base years 1976, 1977, and 1978

income statements. Accordingly, to the extent that this information is already in the record, MI should first compile all such data and request from GTW, DT&I, and Chessie specific information not in the record. DT&I, GTW, and Chessie will be required to promptly provide such information. In our opinion, therefore, petitioner has not shown good cause for a waiver of the requirements of Exhibit C-13, C-14, and C-15.

Petitioner requests a postponement of the January 15, 1979, trackage rights application filing deadline called for by Administrative Law Judge Richard H. Beddow, Jr., on December 11, 1978, for a 60 day period from the date petitioner receives the information called for by this decision. In support of this request, petitioner states that the complexity of all data, the traffic sampling process, and analysis, in conjunction with the fact that petitioner has a limited general staff to assimilate and analyze the material, makes it impossible for petitioner MI to meet the January 15 filing date. Petitioner states further that the analysis process can not begin until requested data has been received from the other parties to the trackage rights applications.

Good cause has not been shown for postponement of the January 15, 1979, filing date for a 60 day period from the date petitioner receives the information called for by this decision. We are very concerned with meeting the time limits set forth in 49 U.S.C. 11343 beyond the Congressionally mandated deadline. On August 15, 1978, the Administrative Law Judge instructed counsel for petitioner to submit a formal pleading requesting trackage rights for the September, 1978, hearings (see page 82, line 16 of transcript). It was not until December 11, 1978, through the testimony of Mr. Vincent M. Malanaphy, Chairman and Chief Executive Officer of MI, that the request for trackage rights was made. Petitioner has had plenty of time to prepare for this proceeding. Therefore, petitioner MI has until 30 days of service of this decision to file its trackage rights applications.

We realize that MI anticipates difficulty in receiving the necessary information from DT&I, the Chessie System, and GTW. To avoid this problem, we will require DT&I, the Chessie System, and GTW, as provided in the above paragraphs, to promptly provide information necessary to complete the trackage rights applications.

This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered:

1. The petition of Michigan Interstate Railway Company is granted to the extent set forth in this decision.

NOTICES

2. DT&I, the Chessie System, and GTW are ordered upon a request made pursuant to section 1100.60 of the *General Rules of Practice* to provide the information set forth in this decision for the completion of the proposed traffic rights applications.

3. Michigan Interstate Railway Company has until 30 days of service of this decision to file its trackage rights applications.

4. Public notice of our action shall be given to the general public by delivery of a copy of this order to the Director, Office of the Federal Register, for publication.

5. This decision shall be effective on the date of service.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown would give MI 15 days from service of this decision to file its trackage rights applications.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5646 Filed 2-23-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[6714-01-M]

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[6714-01-M]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on February 16, 1979, the Corporation's Board of Directors voted, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), and concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for the meeting, on less than seven days' notice to the public, of a request by certain State branches of foreign banks for an exemption from the insurance requirement of section 6(b) of the International Banking Act of 1978.

The Board also determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 16, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
HOYLE L. ROBINSON,
Acting Executive Secretary.

[S-360-79 Filed 2-22-79; 11:35 am]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m., Monday, February 26, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings. Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Kantrow, Spaht, Weaver & Walter, Baton Rouge, Louisiana, in connection with the liquidation of Republic National Bank of Louisiana, New Orleans, Louisiana.

Atkinson, Mueller & Dean, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Taback & Hyams, Jericho, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Bass, Berry & Sims, Nashville, Tennessee, in connection with liquidation of The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Sutherland, Asbill & Brennan, Atlanta, Georgia, in connection with the liquidation of the Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Memorandum and resolution proposing the publication for comment of amendments to the Corporation's rules and regulations which would implement title VIII ("Correspondent Accounts") and title IX ("Disclosure of Material Facts") of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

Memorandum proposing the payment of a second dividend of 34 percent in connection with the receivership of Franklin Bank, Houston, Texas.

Resolution reducing the nonforeign area cost of living allowance for Puerto Rico for Corporation employees.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-366-79 Filed 2-22-79; 3:57 pm]

[6714-01-M]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m., Monday, February 26, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance: Camarillo Community Bank, a proposed new bank to be located at 380 Mobil Avenue (near Pickwick Street), Camarillo, California, for Federal deposit insurance.

First Community Bank and Trust Company, Bossier City, Louisiana, Bossier City, Louisiana, a proposed new bank to be located at the corner of Airline Drive and Village Lane, Bossier City, Louisiana, for Federal deposit insurance.

Applications for consent to establish branches:

Peoples Bank of Lakeland, Lakeland, Florida, for consent to establish a branch at 6711 U.S. Highway 98 North, Lakeland, Florida.

Bank of Carroll County, Temple, Georgia, for consent to establish a branch on the east side of Main Street (State Highway 16—U.S. Highway 27 Alternate) approximately 350 feet north of its intersection with Acock Street, Whitesburg, Georgia.

Commerce Bank of New Jersey, Evesham Township (P.O. Marlton), New Jersey, for consent to establish a branch on East Main Street, near its intersection with High Street, Moorestown, New Jersey.

United Mutual Savings Bank, New York, New York, for consent to establish a branch at 556 Main Street, Islip (Unincorporated Area), Town of Islip, New York.

Application for consent to the issuance of subordinated capital debentures as an addition to capital structure and for advance consent to their retirement at maturity:

Farmers and Merchants Bank of Highland, Highland, Illinois.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,814-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Case No. 43,815-L—The Hamilton Bank & Trust Company, Atlanta, Georgia.

SUNSHINE ACT MEETINGS

Memorandum re: United States National Bank, San Diego, California.

Memorandum re: The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Schall, Boudreau & Gore, San Diego, California, in connection with the receivership of United States National Bank, San Diego, California.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Hoyle L. Robinson, Acting Executive Secretary, 202-389-4425.

[S-367-79 Filed 2-22-79; 3:57 p.m.]

[6715-01-M]

4

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, March 1, 1979, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory Opinion 1979-6.
Appropriations and budget.
Pending legislation.
1980 elections and related matters.
Classification actions.
Routine administrative matters.

PORTIONS CLOSED TO THE PUBLIC (FOLLOWING OPEN SESSION)

Audits and Audit Policy. Compliance. Personnel. Litigation. Labor/Management Relations.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Informa-

tion Officer, telephone 202-532-4065.

MAJORIE W. EMMONS,
Secretary to the Commission.

[S-365-79 Filed 2-22-79; 3:50 pm]

[6820-12-M]

5

FEBRUARY 15, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 9889, February 15, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., February 20, 1979.

CHANGES IN THE MEETING: The above scheduled meeting has been canceled.

PERSON TO CONTACT FOR INFORMATION:

Joanne Kelley, 202-653-5632.

DONALD F. TERRY,
Executive Director.

[S-361-79 Filed 2-22-79; 12:24 pm]

[6820-12-M]

6

FEBRUARY 12, 1979.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., February 12, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

MATTERS CONSIDERED:

DISPOSITION ON THE MERITS

Secretary of Labor v. *Peter White Coal Mining Corp.* HOPE 78-374, etc., 78-344 etc., 78-509, 78-535 etc.; *Peabody Coal Co.*, VINC 78-386; *United States Steel Corp.*, PITT 78-335; *Monterey Coal Co.*, VINC 78-416; *Rochester & Pittsburgh Coal Co.*, PITT 78-323; *Helvetia Coal Co.*, PITT 78-322; *Iselin Preparation Co.*, PITT 78-344; and *Energy Fuels Corp.*, DENV 78-410.

Eastern Associated Coal Corp. v. Secretary of Labor, PITT 76X203; *Florence Mining Company*, *Helen Mining Company*, *Oneida Mining Company*, *North American Coal Corp. v. Secretary of Labor*, PITT 77-15, 77-16, 77-17, 77-18, 77-19, 77-23; *Alabama By-Products Corp. v. Secretary of Labor*, BARB 76-153; *Inland Steel Coal Company v. Secretary of Labor*, VINC 77-164.

VOTE

Voting to close the meeting: Commissioners Waldie (Chairman), Lawson, Nease, Backley and Jestrab. It was determined by this vote that Commission business required that this meeting be closed. Further, the Commission members voted to hold the meeting immediately on the basis that agency business so required and to issue public notice as soon as practicable.

ATTENDANCE

Those present at that closed meeting were Commissioners Waldie (Chairman), Lawson, Nease, Backley and Jestrab; Al Treherne, Robert Phares, Mary Masulla, Dan Delacey, Jim Lastowka, Art Sapper, Acting General Counsel Howard Schellenberg and Joanne Kelley.

CONTACT FOR MORE INFORMATION:

Joanne Kelley, 202-653-5632.

[S-362-79 Filed 2-22-79; 12:30 pm]

[6210-01-M]

7

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 2:30 p.m., Wednesday, February 28, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Tax certification request of American Affiliates, Inc., South Bend, Indiana.

DISCUSSION AGENDA

1. Proposed amendments to Regulation O (Loans to Executive Officers of Member Banks) to implement Title 1 of the Financial Institutions Regulatory and Interest Rate Control Act. (Proposed earlier for public comment; docket No. R-0194).

2. Proposals to implement Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act.

3. Board's regulatory improvement program: review of Regulation S (Bank Service Arrangements).

4. Any agenda items carried forward from a previously announced meeting.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: February 21, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-356-79 Filed 2-22-79; 11:14 am]

[7600-01-M]

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 9648.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m., February 22, 1979.

CHANGES IN THE MEETING: This meeting has been rescheduled for Friday, February 23, 1979, at 9:30 a.m.

Dated: February 21, 1979.

[S-358-79 Filed 2-22-79; 11:14 am]

[7600-01-M]

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 11 a.m., February 28, 1979.

PLACE: U.S. District Court, Courtroom 13 East, 13th Floor, 500 Gold Avenue, S.W., Courthouse and Federal Building, Albuquerque, New Mexico.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: The Commissioners will hear and consider oral argument from the parties in the matter of *Secretary of Labor v. Navajo Forest Products Industries*, OSHRC Docket No. 76-5013.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 202-634-4015.

Dated: February 21, 1979.

[S-359-79 Filed 2-22-79; 11:14 am]

[4410-01-M]

10

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: 9 a.m., February 21, 1979.

PLACE: Room 814, 320 First Street NW., Washington, D.C.

STATUS: Closed, pursuant to a vote to be taken at the beginning of the meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 14, 1979, 44 FR No. 32, pp. 9649-9687.

CHANGES IN THE MEETING: On February 21, 1979, due to adverse weather conditions the Commission

determined that the time for the above meeting be changed to 11:30 a.m. and that the place be changed to the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia, and that the above change be announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

A. Ronald Peterson, Analyst, 202-724-3094.

[S-364-79 Filed 2-22-79; 3:09 p.m.]

[8120-01-M]

11

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 10568, February 21, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:30 p.m., Monday, February 26, 1979.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

CHANGES IN MATTERS TO BE CONSIDERED: The following items are added to the previously announced agenda:

C—PURCHASE AWARDS

4. Invitation No. 51-824520—Fill modifications to mechanical draft cooling towers for the Browns Ferry Nuclear Plant.

5. Contract 78K71-823941—Amendment to contract with Atlas Machine & Iron Works, Inc., for drywell framed embedments for the Hartsville and Phipps Bend Nuclear Plants.

D—PROJECT AUTHORIZATIONS

1. Feasibility studies and site acquisition for a Chattanooga office complex.

H—UNCLASSIFIED

3. Interagency agreement between TVA and the Department of Energy in furtherance of the TVA/DOE/TVPPA distribution automation and load management demonstration project.

CONTACT PERSON FOR MORE INFORMATION:

Lee Sheppard, Assistant Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington, Office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved:

S. DAVID FREEMAN.

RICHARD M. FREEMAN.

Dated: February 21, 1979.

[S-357-79 Filed 2-22-79; 11:14 am]

[8240-01-M]

12

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., March 1, 1979.

PLACE: Board Room, Room 2-500, Fifth Floor, 955 L'Enfant Plaza North SW., Washington, D.C. 20595.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS

PORTIONS CLOSED TO THE PUBLIC (9 A.M.)

1. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.

2. Litigation report.

3. Review of Missouri-Kansas-Texas Railroad Company proprietary and financial information.

4. Review of Conrail proprietary and financial information for monitoring and investment purposes.

5. Consideration of internal personnel matters.

PORTIONS OPEN TO THE PUBLIC (1:30 P.M.)

6. Approval of minutes of the February 1, 1979 Board of Directors meeting.

7. Report on Conrail monitoring.

8. Consideration of Conrail waivers to Financing Agreement.

9. Consideration of Conrail drawdown request for March 1979.

10. Consideration of 211(h) request.

11. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-363-79 Filed 2-22-79; 1:36 pm]

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Register
of
Proposed
Regulations

MONDAY, FEBRUARY 26, 1979

PART II



DEPARTMENT OF
TRANSPORTATION

Office of the Secretary



IMPROVING
GOVERNMENT
REGULATIONS

Regulatory Policies and Procedures

[4910-62-M]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 58]

IMPROVING GOVERNMENT REGULATIONS**Regulatory Policies and Procedures**

AGENCY: Department of Transportation.

ACTION: Adoption of Regulatory policies and procedures.

SUMMARY: The Department of Transportation establishes policies and procedures for simplification, analysis, and review of regulations. These policies and procedures are issued pursuant to Executive Order 12044 on "Improving Government Regulations." It is expected that these policies and procedures would result in fewer, simpler, more comprehensible and less burdensome regulations; improve the opportunity for effectiveness of public involvement; and generally increase the efficiency of the Department's regulatory programs by requiring periodic review of regulations to assure their continued need.

EFFECTIVE DATE: March 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Neil R. Eisner, Assistant General Counsel, Office of Regulation and Enforcement, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Improvement of government regulations has been a prime goal of the Carter Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To further encourage and promote the many efforts to improve the Department of Transportation's ("Department") regulations, on January 31, 1978, the Secretary of Transportation issued a statement of Policies and Procedures for Simplification, Analysis, and Review of Regulations published in the *FEDERAL REGISTER* on March 8, 1978 (43 FR 9582). These policies and procedures were the product of many months of work by all elements of the Department. They were issued initially as an internal memorandum, rather than as a formal Department Order, for two reasons. One, so that the Department might gain a working familiarity with them and make any required changes before issuing them as an Order. Two, so that the Department might more easily make any changes required when the anticipated final Executive Order addressing these concerns was issued.

On March 23, 1978, the President issued a final Executive Order on this matter, "Improving Government Regulations" (E.O. 12044; 43 FR 12661, March 24, 1978). Section 5 of that Executive order requires the following:

Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and the list of regulations that the agency will consider for its initial review. It shall be published in the *FEDERAL REGISTER* for public comment.

Based upon Executive Order 12044, and the Department's working experience with its internal procedures, appropriate modifications to the Department's Policies and Procedures for Simplification, Analysis, and Review of Regulations were made. As modified, those policies and procedures, were published for public comment in the *FEDERAL REGISTER* on June 1, 1978 (43 FR 23925); the Department's list of regulations that it planned to consider for its initial review and the Department's first semi-annual Regulations Agenda of each proposed and each final regulation that the Department expects to publish in the *FEDERAL REGISTER* during the succeeding 12 months or such longer period as anticipated also appeared in the same *FEDERAL REGISTER*. (43 FR 23918 and 23884)

In response to the Department's publication of its Notice of Proposed Regulatory Policies and Procedures (proposal), a large number of public comments were received. To assist the public in reviewing the changes that have been made to the Department's proposal in response to these public comments, the following paragraph-by-paragraph analysis of the changes made has been provided.

EXPLANATION OF CHANGES TO REGULATORY POLICIES AND PROCEDURES

PARAGRAPH 1. PURPOSE

No comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 2. CANCELLATION

No comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 3. EFFECTIVE DATE

No public comments pertaining to this paragraph were received but an effective date of October 1, 1978, has been inserted in the blank.

PARAGRAPH 4. REFERENCES

No public comments directly relating to this paragraph were received and no changes have been made to the Department's proposal.

PARAGRAPH 5. COVERAGE

A number of commenters suggested that additional detail be added to the procedures to help determine when a regulation is significant. The different commenters provided a variety of criteria for inclusion in the proposal. The Department believes that its procedures for identifying significant regulations are working quite well. Moreover, it is noteworthy that the Department publishes as Agenda which includes all significant as well as non-significant regulations it is considering issuing over the next year or longer, as anticipated. Thus, the public can determine, for itself, how the procedures are being applied in practice. Additionally, many of the criteria suggested by the commenters already fit within the existing, general criteria contained in the Department's proposal. Still others addressed too specific a problem and, if included, could eventually result in an extremely lengthy list of items. However, where suggested additional criteria could be helpful, the Department has decided to incorporate them into its proposal. Some of the suggested language was changed because, as proposed, it could have included many nonsignificant regulations. The new criteria that the Department has added are contained in paragraphs 5a(2) (d) through (g).

One commenter was concerned about the use of the nearly identical terms "major" and "significant" to define regulations. The regulatory policies and procedures which were in effect in the Department at the time Executive Order 12044 was issued used the term "major". In the proposal, the term "major" was changed to "significant" to conform with the language in the Executive Order. This should have answered the commenter's concern.

One commenter suggested that the public should be provided an opportunity to comment on the determination that a regulation is or is not significant. The initial classification of significant or nonsignificant may be made a year or more before the issuance of the regulation.

ance of the first regulatory document; however, if an agency knows that it is going to take action in an area, it must list the regulation, with its classification, in the Department's Regulations Agenda which is published in the FEDERAL REGISTER. The classification of the regulation can be changed at any time up to the issuance of the final rule. For example, generally, a nonsignificant regulation would be published as an ANPRM or NPRM in the FEDERAL REGISTER, with an opportunity for public comment. This public comment could lead to a reclassification of the item. For these reasons, it is the opinion of the Department that no change need be made to the proposal.

Several commenters stated that the definition of "emergency" regulation should be more carefully defined and limited. One of these commenters suggested that "emergency" regulations should instead be issued in interim form with a self-executing nullification clause written into the rule." Another commenter suggested that "emergency" regulations should be subject to public comment, even after issuance. To ensure that emergency regulations are given full consideration in the Department and to avoid possible abuses, the Department's proposal required the completion of a Regulatory Analysis or Evaluation subsequent to the issuance of the otherwise significant emergency regulation, unless the Secretary grants an exception. The Department's proposal also suggested the solicitation of comments, through a formal notice, subsequent to the issuance of an emergency rule. Thus, if warranted, the rule could be changed. To further restrict discretion in this area would be unwise, especially within the Department of Transportation which is made up of agencies that basically have responsibility for safety regulation. Moreover, to issue all emergency regulations in an "interim form" would not be workable. For example, an emergency regulation might require the immediate purchase and installation of a replacement part. Once the installation is completed, withdrawing the "interim rule" would be of no value. Finally, there are other possible steps the public can take. For example, many of the initiating offices have procedures for petitions for rulemaking; the public can request a rule change by petition and the agency must respond to that petition. For these reasons, the Department has determined that no changes to the proposal are necessary.

One commenter asked for clarification on "the exclusion of regulations issued in accordance with forward rulemaking provisions of the Administrative Procedure Act." Apparently, by the word "forward", the commenter

was referring to "formal". The proposal stated that the procedures do not apply to "[r]egulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557)." This statement is taken directly from Executive Order 12044 (Sec. 6(b)(1)), which also does not apply to these sections. For these reasons, the Department has determined that no changes to the proposal are necessary.

Another commenter was concerned with rulemakings which are begun before the new procedures go into effect and suggested that a "freeze" be instituted on new rulemaking until the procedures are in effect. The Department already has in effect, since March 1, 1978, regulatory policies and procedures which are substantially similar to those that are contained in this document. When this is considered along with the fact that many Departmental regulatory proposals may either be required by statute or needed to correct a safety problem, a "freeze" would be unwarranted. The Department has determined, therefore, that no change to its proposal is necessary.

PARAGRAPH 6. OBJECTIVES

Two commenters had suggestions that related to the paragraph on "necessity". One thought there was a lack of criteria for what would constitute a justifiable need for a regulation and the other suggested that a regulation should not be issued until it is demonstrated that it "is needed and will attain its objectives without unintended side effects." The Department believes that the concept of "necessity" within the framework of its regulatory responsibilities is not subject to any clearer, more workable definition. However, for clarity, a phrase has been added to paragraph 6e ("Reasonableness") to clearly indicate that anticipated side effects should be considered. It should also be noted that, under paragraph 9a(3), the "direct and indirect effects" of a regulation are considered in determining its significance.

One commenter suggested that, in addition to the objectives of simplification and public involvement, another "area of prime concern is the determination by an agency that legislative goals are being met by a regulation in the most effective way without unnecessary burden to the public" and that this criterion should be stressed during all stages of the development of a regulation. As a general objective, the Department's proposal already provides for this in paragraph 6e ("Reasonableness") and thus the Department believes that no change to the proposal is necessary.

Another commenter suggested that "once rules are in place, changes and reinterpretations of such rules should be severely limited." Any change to an existing regulation would be subject to the "necessity" standard of paragraph 6a. This should meet the concern of the commenter and the Department has determined that a change to the proposal is not necessary.

One commenter suggested that "a statement should be made to the effect that regulations should not be issued which are overlapping or duplicative of the regulations of either the initiating office or of another governmental agency regulating in the same area." Paragraph 6c ("Simplicity") already essentially sets forth this objective. Therefore, the Department has determined that a change to the proposal is not necessary.

PARAGRAPH 7. DEPARTMENT REGULATIONS COUNCIL

A number of commenters suggested that the Regulations Council's meetings should be open to the public and/or that the minutes should be made available to the public. Two of the commenters suggested that the proceedings of the Department Regulations Council are subject to the Government in the Sunshine Act (5 U.S.C. 552b).

There is no legal requirement that Council meetings be open to the public. The Government in the Sunshine Act requires open meetings of agencies headed by more than one person. The Federal Advisory Committee Act, the other general "open meeting" statute, requires open meetings of advisory committees at least one of whose members is not a full-time federal official or employee. Neither of these statutes applies because the Regulations Council is not an agency and all of its members are full-time Federal officials.

In the opinion of the Department, the Council's usefulness to the Secretary depends upon the candor with which members express their views and that candor might well be inhibited were the meetings or minutes completely open and available. Secondly, many of the matters to be discussed by the Council will be in the preliminary and developmental stages, subject to considerable modification prior to any publication. Premature disclosure of some of these matters might tend to mislead the public as to the Department's position, as well as hinder implementation of the ultimate decision.

The creation of a Department Regulations Council goes beyond the requirements of Executive Order 12044. The Department believes that the Council will provide many benefits to the public, such as ensuring that a va-

riety of views and interests are represented when a matter is reviewed. The Department believes that, as proposed, this portion of the policies and procedures ensures the full effectiveness of the Council and no change is warranted.

A number of commenters also suggested that there should be a mechanism for the public to appeal matters to the Regulations Council. The Council's primary responsibility is to review matters within the Secretary's areas of responsibility and make recommendations to him or her. As part of this responsibility, the Regulations Council is actively involved in the review of significant regulations and the Regulations Agenda and in assuring compliance with the regulatory policies and procedures. Thus, no special appeal to the Council is deemed necessary and the Department has determined that no change to its proposal should be made.

One commenter was concerned with a "lack of precision as to which matters are referred to the Council" and how those matters are handled when before the Council. The commenter requested rules of procedure and accountability. Since the Council is comprised of the top policymaking officials of the Department and is generally only providing advice or recommendations, not taking final action on any matter, discretion and informality appear to be better working tools than the detailed procedures suggested by the commenter. For that reason no change has been made to the proposal.

PARAGRAPH 8. RESPONSIBILITIES OF INITIATING OFFICES

Four commenters expressed concerns about the relationship between the Secretary and the head of the initiating office with respect to the authority to classify or issue a regulation. One was concerned that the Secretary might be taking away power vested in an Administrator; the other three stated that the Secretary should have more responsibility in this area. One commenter noted that the proposal required "only that the new regulation and work plan be reviewed and approved by the head of the initiating office before proceeding with further development" and felt that this was inconsistent with Executive Order 12044 which requires that such review must be by "the agency head." The head of the initiating office has the authority to formulate or issue regulations; therefore, the head of the initiating office has the authority to carry out the review steps required by Executive Order 12044. However, to enable the Secretary to carry out his or her responsibilities, the Departmental procedures provide for review and concurrence by the Secretary at

any time, including commenting on the development of issues, reviewing progress, and concurring in decisions. For example, at various stages, but especially during review of the Semi-annual Regulations Agenda and the bi-monthly updates of the Agenda, the Secretary plays a role in the classification of a regulation as "significant" or "nonsignificant". Additionally, for information purposes, the Work Plan is also submitted to the Office of the Secretary as soon as it is prepared. For these reasons, the Department has determined that changes to the proposal are not necessary.

One commenter was concerned with the accountability of decisionmaking officials. The Department believes that the increased responsibility for regulations given to the heads of the initiating offices by the proposal provides effective accountability and no change is deemed necessary.

PARAGRAPH 9. REVIEW OF SIGNIFICANT REGULATIONS

One commenter noted the lack of an explanation of how a proposal originally judged nonsignificant can be changed to significant (or vice versa) after public review. The Department agrees that this does warrant amplification and the proposal has been revised to include a new paragraph 91 which provides that, if the initiating office wishes to reclassify a significant regulation to nonsignificant, it shall so advise the Secretary in writing, and shall make the change only after receiving the Secretary's concurrence. This can be done at any time during the rulemaking process, if the initiating office determines the change is necessary. If a regulatory project is changed from nonsignificant to significant, the Secretary would be advised either through the Semi-annual Regulations Agenda, the bi-monthly updates to that Agenda, or through the submission of a regulatory document to the Secretary for concurrence. If the Secretary decides that a regulation should be reclassified as significant, under existing procedures the Secretary already has the authority to send a simple memorandum directing such a change.

Because regulations can be reclassified at any time under the procedures, the Department believes that it is important to keep the public advised at each stage of the regulatory process of the classification of a regulation. Therefore, the Department has decided to revise paragraph 9a to provide that if a regulation is considered nonsignificant it will now be accompanied by a statement in the FEDERAL REGISTER to that effect both at the time the regulation is proposed, as the proposal required, and when the final rule is published.

Two commenters suggested additional items for inclusion in the Work Plan. Some of the items requested were already included in the proposed requirements for a Work Plan. With respect to the others, it is the opinion of the Department that to further expand the Work Plan is unnecessary and might make the proposal unworkable. Therefore, no changes have been made to the proposal.

One commenter suggested that a Work Plan should be required for all non-emergency rulemaking proposals, not just significant ones. The Department believes that imposing such additional paperwork requirements on the initiating offices would not achieve benefits worth the additional burden. Therefore, the Department's proposal has not been changed.

One commenter was concerned that there was no provision in the Work Plan for an assessment of necessary technical expertise before the rulemaking begins. Such an assessment would generally be part of the consideration by the head of the initiating office of the major issues involved and the alternative approaches to be explored. For that reason, no change has been made to the proposal.

PARAGRAPH 10. REGULATORY ANALYSES AND EVALUATIONS

A number of commenters recommended that the Department expand and further define its criteria for requiring a Regulatory Analysis. One also suggested that when an agency is authorized to regulate in more than one area, such as safety and fuel economy, both areas of regulation should be taken into account. Another commenter suggested a more precise explanation of the methods used for the economic analyses. Finally, one of the commenters suggested that regulations should be issued only when it is demonstrated that the prospective benefits are not outweighed by the economic costs. On its own initiative, the Department has decided to add one new item to paragraph 10a to cover matters which have a substantial impact on the balance of trade. Because the Department requires either a Regulatory Analysis or an Evaluation, both of which include economic analyses, for all regulations the Department does not believe that the list of criteria need be expanded further. Although it is contemplated that an Evaluation usually would not be as extensive as Regulatory Analysis, some regulations not requiring a Regulatory Analysis might have an economic effect that would result in an extensive Evaluation. With respect to the concern about agencies that regulate in more than one area, this is covered by paragraph 6a ("Reasonableness"), which requires consideration of

consequences. In response to the request for a more precise definition of the analytical methods to be used, it is the Department's opinion that the variety of regulatory actions handled within the Department requires a great deal of discretion in the choice of methodology. For example, there might be a great deal of difference between the methodology used to examine a Federal Aviation Administration regulation which affects air carriers and another which affects only the operators of small aircraft; this methodology may differ further from that necessary to analyze a National Highway Traffic Safety Administration regulation which affects all automobile operators. With respect to the comment on the cost/benefit ratio, the economic evaluation required for every regulation includes an assessment of the costs and benefits. In addition, the "Reasonableness" provision requires consideration of burdens. Therefore, the Department believes no change to its proposal is necessary.

One commenter suggested explaining fully to the public any decision not to require a Regulatory Analysis by providing a detailed estimate of how the proposed rule fell short of the criteria. As explained above, if a Regulatory Analysis is not done, an Evaluation must be prepared and placed in the public rulemaking docket. The economic analysis contained in the Evaluation would, by its very nature, provide a detailed estimate of where the proposed rule falls short of the Department's criteria for a Regulatory Analysis. Therefore, the Department believes no change to its proposal is necessary.

Two commenters suggested that a full and detailed Regulatory Analysis should be completed even before issuing an advance notice of proposed rulemaking. One purpose of an advance notice of proposed rulemaking is to encourage early public participation in the development of a rule. For this reason, an advance notice of proposed rulemaking often may simply identify a problem that has been raised and ask for comments and suggestions. It is noteworthy that Executive Order 12044 does not even require that a Regulatory Analysis be made available when an advance notice of proposed rulemaking is issued. The Department has gone beyond the Executive Order but recognizes that in many instances the economic analysis will be very preliminary and may primarily identify the questions that must be asked and the data that must be gathered. Because it wishes to encourage early public participation, the Department does not believe any change to its proposal would be appropriate.

One commenter suggested that the proposal be changed to require a state-

ment of how the public may obtain a copy of any draft Evaluation or final Regulatory Analysis or Evaluation. The Department's proposal simply required that the advance notice or notice of proposed rulemaking include "a statement of how the public may obtain a copy of the draft Regulatory Analysis for review and comment." The Department agrees that it would be advantageous to provide the suggested information; therefore, advance notices, notices of proposed rulemaking, and final rules will advise the public how they may obtain a copy of a draft or final Regulatory Analysis or Evaluation. Paragraph 10e and f of the proposal have been revised accordingly.

One commenter suggested a brief statement of the "cost/benefit relationship considered in the development of a regulation" be released with a proposed rulemaking. Placing the draft Evaluation or Regulatory Analysis in the docket, and indicating in any advance notice or notice of proposed rulemaking how the public may obtain copies of it, appears to satisfy this request. For this reason, no change appears necessary to the Department's proposal.

PARAGRAPH 11. REVIEW AND REVISION OF EXISTING REGULATIONS

One commenter suggested that in reviewing existing regulations special consideration be given to the nature and extent of "complaints and/or suggestions received from users who implement your rules and regulations—states and local governments." The Department agrees that this emphasis can be added to the list of factors considered by the initiating office in identifying existing regulations for review. However, it should refer generally to "users" and not just to States and local governments. Paragraph 11b(1) has been amended accordingly.

On its own initiative, the Department has also expanded paragraph 11b(2) to stress the consideration, in determining the need for a review, that should be given to the number of requests for interpretation or the problems evidenced in enforcement.

Two commenters had suggestions concerning the scheduling of reviews. One commenter suggested establishing a schedule for review of each existing regulation on a regular pre-determined basis. The other commenter suggested establishing a definite period of time for the agency to complete a review. This commenter further suggested that if the review was not conducted during the set time, the regulation should be declared void until such time as the review is completed. Arbitrary schedules may mean delaying other, more important regulatory activity. Moreover, the Department be-

lieves that regulations, especially safety regulations, should not be declared void because some pre-determined schedule has not been met for what may be valid reasons. It must be stressed that, generally, the public does have the right to submit to the initiating office a petition for rulemaking if, in its opinion, changing technology or economic conditions or other factors support the need for a change in the regulations. For these reasons, the Department has decided to make no change to its proposal.

PARAGRAPH 12. OPPORTUNITY FOR PUBLIC PARTICIPATION

The Department recognizes the need for early and effective public participation. In light of that, as the following paragraphs indicate, a number of additions or changes have been made to paragraph 12. The Department wishes to stress, however, that other possible, additional methods of improving public participation are under consideration and may be added at a later date. The public will be given an appropriate opportunity to comment before they are added.

Several commenters suggested that the Department's procedures should provide for earlier and more meaningful public participation. A number of them suggested a variety of means to accomplish this. One commenter suggested making the draft of a notice of proposed rulemaking "available to those directly affected approximately 30 days in advance of its publication in the FEDERAL REGISTER." Much of what was requested by the commenters has already been provided to the maximum extent possible. For example, publication of the Work Plan or a summary of its major elements, as one commenter suggested, would defeat its purpose as a working tool. Much of the information in the Work Plan is published in the Agenda. However, to publish the rest of it at too early a stage could be misleading and could lead to premature public comment. It is the opinion of the Department that the public should be involved at the earliest stages, but that when a regulatory project has been sufficiently developed so that it can be discussed with the public, it should be discussed with all interested parties. The Department is also concerned that such steps as the circulation of draft notices of proposed rulemaking or the allowance of public participation in the development of a proposed regulation before any documents are even published in the FEDERAL REGISTER could violate either the Administrative Procedure Act (5 U.S.C. 551 et seq.) or the Federal Advisory Committee Act (5 U.S.C. App. I). For these reasons the Department believes that a change should not be made to its proposal.

One commenter felt Executive Order 12044 requires public comment before the issuance of a notice of proposed rulemaking. The Department believes that the Executive Order does not require this and that it is not necessary to change the Department's proposal. The Department does however, wish to note that its procedures do provide for numerous, proper methods for obtaining public participation in the earliest stages in the development of a rule. For example, the Department encourages the appropriate use of advance notices or proposed rulemaking, advisory committees, regulatory conferences, and other general meetings with the public prior to the issuance of notices or advance notices.

Several commenters suggested that a longer comment period should be permitted on proposed regulations. However, requiring lengthy time periods may unnecessarily waste time. It appears better to allow the initiating offices discretion to determine, in appropriate instances, that a particular rulemaking should have a comment period longer than the minimum set forth in the proposal. Moreover, the initiating offices generally can grant a petition for an extension of time where warranted. The Department believes that the initiating offices have been quite liberal in both providing for comment periods well in excess of the minimums established in the procedures, as well as in granting petitions for extensions of time to comment. Therefore, the Department has determined that no changes should be made to its proposal.

Three organizations commented on the Department's proposal concerning State and local participation. Two comments in favor of more participation offered suggestions for increasing the opportunities for State and local government participation. Contrasted with this was a comment that these provisions create the possibility that the legal restraints placed on agency contacts during rulemaking can be flouted and undermine the Federal Advisory Committee Act. These commenters are addressing a portion of the Department's proposal taken directly from the two Presidential memoranda referenced in paragraph 4c. The concerns expressed are now being reviewed within the Executive Branch of the government. For that reason, the Department deems it improper at the present time to change the Department's proposal in this area.

One commenter suggested an expanded list of specific actions which could be required for public participation. Many of the suggestions were already contained in the Department's proposal; however, the Department has decided that some of the items not

already covered should be included, and paragraph 12a has been revised accordingly through the addition of paragraphs (3), (5) and (7).

Another commenter suggested that the nature and assumptions of the research relied on to support a particular regulatory approach be fully identified and its significance in the regulatory process acknowledged. The commenter further stated that any documentation should be clearly referenced and the source material made available for public review. The Department generally agrees with this commenter and, although it believes that the suggestions are being carried out within the Department, paragraph 12a has been revised by the addition of paragraph (6); this paragraph sets forth the need to (1) identify the nature and importance of the research and (2) place a copy of any source material in the public rulemaking docket.

One commenter suggested that critical research studies should be subject to peer review by persons with a demonstrated expertise in the area of the study. It is not clear at what stage or in what manner such peer review would be accomplished. The existence of such studies will be clearly noted in an advance notice or notice of proposed rulemaking, in accordance with paragraph 12a(6); peer review could be accomplished during the review of these notices. Additionally, when copies of critical research studies relating to rulemaking are ready for release, they should be made available to the public in general and not just to a limited group of individuals or organizations. For that reason, the Department has decided to make no changes to its proposal.

Another commenter was concerned about the public's limited ability to rebut comments submitted to the docket and also noted the limited availability of the docket to people outside Washington, D.C. As part of its effort to increase public participation in its rulemaking, the Department is interested in adopting reasonable methods for making the docket more readily available to the public and has examined this problem. For example, at least one agency has provided for a rebuttal period after the close of the initial comment period. Additionally, many of the Department's public hearings on rulemakings (many of which are held outside Washington, D.C.) allow speakers to rebut other comments. The Department does not feel that the use of a rebuttal period should be a requirement for all rulemakings, but to indicate its support for this procedure when it is deemed appropriate, the Department has added a new paragraph (4) to paragraph 12a.

Still another commenter suggested that all non-emergency rulemaking proposals should begin with an advance notice and public participation. This unnecessarily takes away agency discretion. Not only may there be no reason in many cases to go through the double steps of an advance notice and a notice of proposed rulemaking, but the flexibility of the current process allows supplemental notices of proposed rulemaking to be issued in the instances where the initial notice was insufficient. Therefore, the Department believes no change to its proposal is necessary.

One commenter suggested that an advance notice should be used only for the purpose of exploring a possible problem area to determine whether regulations are needed, and a notice of proposed rulemaking should be used only to explore alternative solutions once the need for regulatory action has been determined. In many instances an advance notice is used as suggested. There appears, however, no reason to limit its use. For example, there may be no question that a regulation is needed but the agency may not have a clear idea of how to proceed. In these instances an advance notice of proposed rulemaking could not be used under the commenter's suggestion. For these reasons, the Department has decided to make no changes to its proposal.

Another commenter was concerned that the Department's proposal did not require that all nonsignificant regulations be subject to notice and public comment. It is the Department's policy that notice and public comment should be provided to the maximum extent possible, if this could reasonably be expected to result in the receipt of useful information. Since this policy has been in effect in the Department, many more regulatory proposals have been subjected to public comment. It is the Department's opinion, however, that Executive Order 12044 does not require that all nonsignificant regulations be subject to notice and public comment. For example, the Department is currently preparing an amendment to its Time Act regulations. When originally issued, the regulations inadvertently referred to the border between North Dakota and Nebraska, thereby eliminating South Dakota from the "time map." Having noted the error, the Department is preparing an amendment to return the South Dakota-Nebraska border. There appears to be no reason to provide for notice and public comment on this matter as it could lead to no meaningful public comment; it would be a waste of time and money and it would not be in the public interest. For these reasons, the Depart-

ment has determined that no change is necessary to its proposal.

One commenter noted that the Department proposals suggested that the public be encouraged to comment subsequent to the issuance of a final rule in certain instances. The commenter felt that the Department's regulations (49 CFR 5.27) indicates that such comments need not be considered. Paragraph 12d was intended to provide an opportunity for the public to comment after the issuance of a final rule, when it is not possible to ask for comment prior to its issuance. It was the Department's intention that this request for comments would be done through a formal rulemaking document which would establish a specified comment period. To clarify this, the Department has revised its proposal through the addition of clarifying language in paragraph 12d. In addition, the Department has determined that additional language is necessary to make clear its general intent under paragraph 12d. The Department has also decided to add a sentence to this paragraph requiring that, when a determination is made that notice and an opportunity for comment cannot be provided, a statement of the reasons should be included with the regulation when it is published in the *FEDERAL REGISTER*.

Another commenter suggested that industry members usually do not know the results of studies conducted by or for the Department at the time they make presentations at hearings and suggested that additional hearings be scheduled after such studies are published. Existing agency procedures already permit this where appropriate. Therefore, a change to the proposal is unnecessary.

PARAGRAPH 13. REGULATIONS AGENDA

Two commenters had concerns about the Agenda. One suggested that listing the publication dates meant that the Department had already made up its mind to go ahead with rulemaking on that particular subject. The other commenter was concerned with references to the Federal-aid Highway Program Manual and other documents such as Operations Review Notices for FAA programs, and suggested that the Agenda include information on how to secure such items in a timely fashion. This commenter also suggested that the format for the Regulations Agenda appears more workable than the format for the Review List and suggested that, for the sake of clarity and uniformity, both have the same format.

The Agenda very carefully indicates that the listing of a date does not indicate that a decision has been made to issue a notice or final rule; rather, the date simply indicates to the public

that, if a decision is made to issue such a document, it can be expected by that date. However, to alleviate any problems, the Department had revised paragraph 13b (3) to change "publication date" to the "date for a decision on whether to issue the proposed or final regulation." Other language changes to conform with this have been made to paragraphs 13a and b.

With respect to the concern stated by the other commenter about the references to documents that some members of the public do not have, these references were provided as extra information to assist those who do have such documents. Moreover, contact points for further information were provided. However, to further assist the public, the Department has revised its procedures to indicate how referenced documents can be obtained by adding a new requirement to paragraph 13b (2).

GENERAL

Two commenters suggested that, after the first year, an analysis of how the procedures are working be preparing and published. The Department recognizes that the promulgation of these policies and procedures is only the first step and that it is more important to assure that they are being effectively implemented. Therefore, the Department plans to make such an evaluation and will provide the public with an opportunity to make comments. The Department does not believe a change to its proposal is necessary to accomplish this.

The Department of Justice has recommended that: (1) "no proposed regulation be considered non-significant if it will have a disparate impact based on sex"; (2) "the 'Review and Revision of Existing Regulations' should include a paragraph specifically calling for an amendment of unnecessary or inappropriate gender-based terminology"; in existing regulations; and (3) "compliance with E.O. [Executive Order] 12044 include a review of all proposed new regulations for unnecessary or inappropriate gender-based distinctions." The Department generally agrees with this policy and has already taken action on the matter. On December 12, 1977, the General Counsel advised the initiating offices of the Department to take appropriate action to phase sex-neutral terms into their regulations. As a general rule, they were advised that sex-neutral terms should be used whenever a new part of the *FEDERAL REGISTER* was drafted or a major revision to a part was undertaken. Also, they advised that in many situations sex-neutral terms could be used in minor revisions and still avoid inconsistencies with other portions of the regulations. It is the Department's position that, proceeding in this fashion,

it should be able to phase in sex-neutral terms in a relatively orderly manner. However, with respect to the Department of Justice's specific request, if a regulation would have a "disparate impact based on sex", it should fit within the definition already contained in the proposal for significant regulations. The other two recommendations seem unnecessary and inappropriate for inclusion in a general document such as the Department Regulatory Policies and Procedures. The Department wishes to stress, though, that it is taking steps to eliminate inappropriate gender-based terminology in existing regulations as well as in new regulations. Therefore, no further change to the proposal is deemed necessary.

One commenter suggested bi-monthly sessions be established as a forum for industry to give input to the Department on its regulations. Not enough information was given by the commenter to indicate how such hearings would be effective. Hearings are held by the Department to solicit suggestions on particular regulations or general areas of concern. General, bi-monthly sessions do not appear structured enough to lead to meaningful results. Therefore, the Department has made no change to its proposal.

One commenter noted that one of the Department's initiating offices has never published procedures in the Code of Federal Regulations governing the features of its regulatory process. Although this matter is technically outside the scope of the notice, the Department will review this matter and determine the feasibility of having all its initiating offices publish such procedures.

One commenter was concerned that one of the initiating offices of the Department presently has procedures whereby regulatory materials are issued by means of "notices" and "orders". Any matter which fits within the definition of regulation as used in the Administrative Procedure Act, Executive Order 12044, or the Department's Regulatory Policies and Procedures must conform to the requirements in those documents. No change to the proposal is necessary.

One commenter suggested that the Department's proposal fails to achieve the objective of rendering a rulemaking process "more efficient and predictable in the creation and delivery of agency policy." The Department believes that the process will be much more efficient and predictable through the use of such procedures as the Agenda, the Work Plans and the devices to encourage greater public participation. Therefore, the Department does not believe that changes are needed in its proposal.

One commenter suggested that in the final procedures "a function responsibility chart be included that could be used to follow the regulations through the various functions and departments of the agency during the development/review process." The Department does not feel it is necessary to amend its proposal to accomplish this objective but will give consideration to preparing such charts and publishing them in the *FEDERAL REGISTER* at a later date. Even if not published in the *FEDERAL REGISTER*, such charts could be used in conjunction with another recommendation, which the Department has adopted, to provide seminars around the country on use of the Department's regulatory processes.

One commenter expressed concern with the lack of provisions in the Departmental proposal to prohibit "retroactive rulemaking." It is not clear what the commenter means by "retroactive rulemaking." The only regulations which could be thought to be "retroactive" are rules which do not take effect until issued, but apply, for example, to any product manufactured or action taken after the date the notice was issued. This is generally intended to prevent defeat of the purpose of any final regulation by those who might take action in response to the proposed regulation. Not only is this not, technically, a retroactive rulemaking, but the public also has an opportunity to comment on the application date during the notice and comment stage. As a result, the Department does not deem it appropriate to revise its proposal.

One commenter suggested that the Department's procedures include a requirement for the development of a three- to five-year plan for significant regulatory activity relating to the safe transportation of hazardous goods. The National Highway Traffic Safety Administration has already published a five-year plan and another initiating office has one under consideration. Although others may consider it, due to the amount of effort necessary to prepare such a document and to the fact that the Department's current Regulations Agenda covers a full year or longer, the Department does not feel it appropriate to require initiating officers to prepare such a plan.

One commenter was "strongly opposed" to the "NHTSA policy of funding self-appointed and proclaimed consumer advocates and representatives in their journeys to Washington, or wherever the concerned hearings might be taking place in order to voice their own comments as the opinion of the general public." This comment is generally outside the scope of the notice. However, the Department would like to explain how the National

Highway Traffic Safety Administration program works. Under the program regulations, members of the public are invited by notice in the *FEDERAL REGISTER* to apply for financial assistance. Funding is available to any individual or organization, both non-profit and profit-seeking, that can demonstrate that it is financially unable to participate effectively, and that its participation could contribute substantially to a full and fair determination of the issues involved in the proceeding.

In addition to the above, the Department would like to note that other minor, editorial changes have been made throughout the proposal.

Issued in Washington, D.C. on February 15, 1979.

BROCK ADAMS,
Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION

REGULATORY POLICIES AND PROCEDURES

1. PURPOSE

This Order establishes objectives to be pursued in reviewing existing regulations and in issuing new regulations; prescribes procedures and assigns responsibilities to meet those objectives; and establishes a Department Regulations Council to assist and advise the secretary in achieving those objectives and improving the quality of regulations and the policies and practices which affect the formulation of regulations.

2. CANCELLATION

a. The following documents are superseded and cancelled:

(1) The Secretary's memorandum of March 23, 1976, on the subject of "Departmental Regulatory Reform."

(2) Notice 76-5 entitled "Policies to Improve Analysis and Review of Regulations" issued April 13, 1976, and published in the *FEDERAL REGISTER* on April 16, 1976 (41 FR 16200-01).

(3) The Secretary's memorandum of February 8, 1977, on the subject of "DOT Regulations."

(4) The Deputy Secretary's memorandum of March 9, 1977, on the subject of "Review of Regulations—Interim Regulations."

(5) The General Counsel's memorandum of April 25, 1977, on the subject of "Authorship of Regulatory Documents."

(6) Department of Transportation Order 2050.4 on the subject of "Procedures for Considering Inflationary Impacts."

(7) The Secretary's memorandum of January 31, 1978, and the statement attached thereto, on the subject of "Policies and Procedures for simplification, analysis, and Review of Regulations."

b. The controls listed in the table of "Controls of Certain Powers and Duties" in the DOT organization manual (DOT Order 1100.23A, Figure I-C) requiring the head of an operating administration to coordinate notices of proposed rulemaking and regulations with the Office of the Secretary before issuance are superseded and suspended pending their cancellation by amendment to the organization manual. The controls requiring the head of an operating administration to coordinate regulatory documents with another operating administration are not affected by this Order and continue to be the responsibility of the originating operating administration.

3. EFFECTIVE DATE

This Order is effective March 1, 1979.

4. REFERENCES

a. Title 5, United States Code, sections 552(a)(1) and 553 which prescribe general procedural requirements of law applicable to all Federal agencies regarding the formulation and issuance of regulations.

b. Executive Order 12044, "Improving Government Regulations," which prescribes general policy and procedural requirements applicable to all Federal executive agencies regarding the improvement of existing and future regulations.

c. Presidential memoranda of March 23, 1978, and February 25, 1977, for the heads of executive departments and agencies, which prescribe general policy and procedural requirements applicable to all Federal executive agencies regarding State and local government participation in the development and promulgation of significant Federal regulations having a major intergovernmental impact.

5. COVERAGE

a. Definitions.

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office, or the Secretary, or the Deputy Secretary:

(a) Requires a Regulatory Analysis under paragraph 10a of this Order or is otherwise costly;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a major impact on another operating administration or other

parts of the Department or another Federal agency;

(d) Has a substantial effect on State and local governments;

(e) Has a substantial impact on a major transportation safety problem;

(f) Initiates a substantial regulatory program or change in policy;

(g) Is substantially different from international requirements or standards; or

(h) Otherwise involves important Department policy.

(See paragraph 9a of this Order for factors to consider in applying this definition.)

(3) *Emergency regulation* means a regulation that:

(a) In the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the *FEDERAL REGISTER*; or

(b) Is governed by short-term statutory or judicial deadlines.

(4) *Nonsignificant regulations* means a regulation that in the judgment of the head of the initiating office is neither a significant nor an emergency regulation.

b. Applicability.

(1) This Order applies to all rules and regulations of the Department, including those which establish conditions for financial assistance.

(2) This Order does not apply to:

(a) Any rulemaking in which a notice of proposed rulemaking was issued before the effective date of this Order and which was still in progress on that date;

(b) Regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

(c) Regulations issued with respect to a military or foreign affairs function of the United States;

(d) Matters related to agency management or personnel; or

(e) Regulations related to Federal Government procurement.

6. OBJECTIVES

To simplify and improve the quality of regulations, it is the policy of the Department that the following objectives be pursued in issuing new regulations and continuing existing regulations:

a. *Necessity.* A regulation should not be issued or continue in effect unless it is based on a well-defined need to address a specific problem.

b. *Clarity.* A regulation and any supplemental material explaining it should be clear, precise, and understandable to all who may be affected by it.

c. *Simplicity.* A regulation should be as short and uncomplicated as possible;

before issuance, it should be coordinated as required within the Department and between the Department and other Federal agencies to eliminate or minimize unnecessary duplication, inconsistency, and complexity; it should be issued only after compliance costs, paperwork and other burdens on the public are minimized.

d. *Timeliness.* A regulation should be issued in time to respond to the circumstances that require it and should be modified or cancelled as those circumstances change.

e. *Reasonableness.* A regulation should provide a feasible and effective means for producing the desired results; it should be developed giving adequate consideration to the alternatives, to anticipated safety, environmental, social, energy, economic, and legal consequences, and to anticipated indirect effects; it should not impose an unnecessary burden on the economy, on individuals, on public or private organizations, or on State and local governments.

f. *Fairness.* Generally, a regulation should be issued only after a reasonable and timely opportunity has been provided for all interested persons to comment on it.

7. DEPARTMENT REGULATIONS COUNCIL

a. *Membership; Chair and Vice-Chair.* A Department Regulations Council is hereby established comprised as follows:

Regular Members

- (1) The Deputy Secretary—Chair
- (2) General Counsel—Vice-Chair
- (3) Assistant Secretary for Policy and International Affairs
- (4) Assistant Secretary for Budget and Programs
- (5) Assistant Secretary for Administration
- (6) Assistant Secretary for Governmental Affairs
- (7) Director, Office of Public and Consumer Affairs
- (8) Director, Departmental Office Of Civil Rights

Ex Officio Members

- (1) Commandant of the Coast Guard
 - (2) Federal Aviation Administrator
 - (3) Federal Highway Administrator
 - (4) Federal Railroad Administrator
 - (5) National Highway Traffic Safety Administrator
 - (6) Urban Mass Transportation Administrator
 - (7) Saint Lawrence Seaway development Corporation Administrator
 - (8) Research and Special Programs Administrator
- b. *Functions and responsibilities.* The Council:

(1) Monitors initiating offices' programs for reviewing and revising their existing regulations and makes recommendations to the heads of initiating offices and the Secretary when appropriate with regard to the conduct and effectiveness of those programs;

(2) Considers each significant regulation referred to it and makes such recommendations as the members consider appropriate regarding the advisability of the Secretary's concurring in its issuance;

(3) On its own initiative or upon request, reviews, discusses, and makes such recommendations to the Secretary as the members consider appropriate regarding Department regulatory policies and procedures; and

(4) In coordination with the initiating office(s) concerned, designates such task forces or requires the preparation of such reports, analyses, or options papers as it considers necessary for proper Council consideration of any regulatory matter or inquiry referred to or initiated by the Council.

c. *Staff support.* The General Counsel provides regular staff support to the Council and designates an Assistant General Counsel to be responsible for performing the functions assigned to the General Counsel's office. These include the coordination of the staffing, analysis, and review of items coming before the Council or on which the Council requires additional information; the convening and management of task forces designed to review and improve major categories of existing regulations; and such additional duties as the Council may specify.

d. *Meetings; attendance of members.* The Council meets on a regular bi-monthly basis. It also meets on special occasions, at the call of the Chair, either on his or her own initiative or at the request of the head of an initiating office. Attendance by ex officio members is optional. Any member who is unable to attend a meeting may be represented at the meeting only by the member's principal deputy or Chief Counsel. A member may be accompanied by supporting staff for purposes of briefing the Council or assisting the member with respect to an agenda item or a significant regulation scheduled for discussion.

e. *Agenda.* The General Counsel's office prepares an agenda for each meeting and distributes it to the members in advance of the meeting, together with any documents to be discussed at the meeting. When the agenda includes consideration of a significant regulation, the general Counsel's office makes such arrangements with the initiating office as may be appropriate for briefing the Council and responding to questions concerning the regulation.

f. *Minutes.* The general Counsel's office prepares summary minutes following each meeting and distributes them to the members.

8. RESPONSIBILITIES OF INITIATING OFFICES

a. The head of each initiating office is primarily responsible for:

(1) reviewing proposed regulations to ensure that they meet the objectives set forth in paragraph 6 of this Order;

(2) issuing regulations within the scope of his or her statutory or delegated authority;

(3) coordinating proposed regulations with other Federal agencies and other operating administrations and organizational elements within the Department; and

(4) In conjunction with the Assistant Secretary for Governmental Affairs, consulting with State and local governments as required under the memoranda referenced in paragraph 4c of this Order in the development of regulations to be issued by that office.

b. To improve the quality of existing and future regulations in accordance with the purposes and policies set forth in this Order, the head of each initiating office:

(1) Establishes and carries out a program for reviewing and revoking or revising existing regulations in accordance with paragraph 11 of this Order;

(2) Includes in the public docket for each proposed regulation a draft Regulatory Analysis or Evaluation as required under paragraph 10 of this Order;

(3) Includes in the public docket for each final regulation a final Regulatory Analysis or Evaluation as required under paragraph 10 of this Order;

(4) Submits Regulations Reports to the Department Regulations Council in accordance with paragraph 13a of this Order;

(5) Submits for the Secretary's concurrence, before issuance, regulatory documents pertaining to significant regulations, together with such supporting documentation as may be required by paragraph 9 of this Order;

(6) Advises the Secretary by memorandum, before issuance if possible, of the circumstances requiring emergency issuance of an otherwise significant regulation;

(7) Names a Regulations Officer to coordinate the review of regulations and act as principal staff liaison with the Council; and

(8) Informs the Deputy Secretary or the General Counsel of any regulatory matter that should be reviewed by or coordinated with the Council.

9. REVIEW OF SIGNIFICANT REGULATIONS

a. In determining whether a regulation is significant, the following things, among others, are considered:

(1) The type and number of individuals, businesses, organizations, and State and local governments affected;

(2) The compliance and reporting requirements likely to be involved;

(3) Direct and indirect effects of the regulation including the effect on competition; and

(4) The relationship of the regulations to those of other programs and agencies.

Proposed and final regulations that are not considered significant under this Order are accompanied by a statement in the FEDERAL REGISTER to that effect.

b. Before an initiating office proceeds to develop a significant regulation, the head of the initiating office considers the need for the regulation, the major issues involved and the alternative approaches to be explored. If he or she determines that further action is warranted, the initiating office then prepares a Work Plan. The Work Plan states or describes:

(1) The need for the regulation;

(2) The objective(s) of the regulation;

(3) The legal authority for the regulation;

(4) The names of the individual or organizational unit primarily responsible for developing the regulation and of the accountable official;

(5) Whether a Regulatory Analysis is likely to be required and how and where it will be produced;

(6) The probable reporting requirements (direct or indirect) that may be involved;

(7) A tentative plan for how and when the Congress, interest groups, other agencies, and the general public will have opportunities to participate in the regulatory process; and

(8) The tentative target dates for completing each step in the development of the regulation.

If the Work Plan is approved by the head of the initiating office, the development of the significant regulation may proceed.

c. As soon as it is approved, the Work Plan is submitted to the General Counsel for his or her information.

d. Before issuing for publication in the FEDERAL REGISTER any regulatory document of substantive significance (e.g., advance notice of proposed rulemaking, notice of proposed rulemaking, notice of withdrawal, supplemental notice or final rule) or a notice of an exclusively procedural nature (e.g., extending time for comments or scheduling a public hearing) pertaining to a significant regulation, the initiating office submits it to the Secretary for concurrence.

e. To receive Secretarial concurrence for the issuance of any regulatory document of substantive significance pertaining to a significant regulation, the initiating office submits it to the General Counsel's office at least 30 days before the proposed date of issuance;

included with this submission is (1) an approved Work Plan, (2) a draft or final Regulatory Analysis or Evaluation, and (3) a summary of the results of any coordination outside the initiating office. Once a Work Plan and Regulatory Analysis or Evaluation is developed for a particular significant regulation, they are only updated and supplemented for successive regulatory documents pertaining to that significant regulation. In the case of a final rule submitted for Secretarial concurrence, there is an accompanying summary of meaningful public comments received.

f. Before submitting a final rule for Secretarial concurrence, the head of the initiating office reviews all the documents required to be submitted and determines that, at a minimum:

(1) The regulation is needed;

(2) The direct and indirect effects of the regulation have been adequately considered;

(3) Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) Public comments have been considered and an adequate response has been prepared;

(5) The regulation is written in plain English and is understandable to those who must comply with it;

(6) An estimate has been made of the new reporting burdens or record-keeping requirements necessary for compliance with the regulation;

(7) The name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) A plan for evaluating the regulation after its issuance has been developed.

g. The General Counsel's office distributes each regulatory document and accompanying supporting documents received from an initiating office under paragraph 9d of this Order to all appropriate Secretarial Officers for review and coordinates their comments and recommendations for transmittal, together with a staff analysis, to the Secretary through the Deputy Secretary.

h. The Deputy Secretary or the General Counsel may refer a significant regulation to the Department Regulations Council for its consideration at its next regular or special meeting. This is done if, in the judgment of the Deputy Secretary or the General Counsel, the views of the Council on that regulation are desirable or likely to assist the Secretary in determining whether to concur in its issuance. Council consideration of a significant regulation is in addition to and not in lieu of Secretarial staff review; both are scheduled and coordinated so as to minimize delay in transmitting the re-

sulting recommendations to the Secretary.

i. To receive Secretarial concurrence for the issuance of any notice of an exclusively procedural nature pertaining to a significant regulation, the initiating office submits a copy of the notice to the General Counsel's office at least 3 days before the intended date of issuance; included with this submission is a memorandum which specifies the intended date of issuance, states why the notice is required and describes any changes that it will cause in the previously anticipated schedule of action dates on the significant regulation concerned.

j. The General Counsel may concur for the Secretary in the issuance of a procedural regulatory document received from an initiating office under paragraph 9i of this Order, when warranted. The General Counsel advises the Secretary through the Deputy Secretary of such action as soon as possible. For all other such documents, the General Counsel's office advises the Secretary through the Deputy Secretary of each document received. Unless otherwise notified before the intended date of issuance, Secretarial concurrence may be presumed.

k. For an emergency regulation that otherwise would be significant, the initiating office includes with the regulation when published in the *FEDERAL REGISTER*, a statement of the reasons why it is impracticable or contrary to the public interest for the initiating office to follow the procedures of this Order and Executive Order 12044. Such a statement includes the name of the policy official responsible for this determination.

1. If, at any time during its development, the head of the initiating office determines that a regulation classified as significant should be reclassified as nonsignificant, he or she submits a memorandum providing the basis for the recommended change to non-significant to the Secretary for concurrence. The regulation continues to be handled as significant unless the Secretary concurs in the change.

10. REGULATORY ANALYSES AND EVALUATIONS

a. Except as indicated in paragraph 10g of this Order, an initiating office prepares and places in the public docket a draft Regulatory Analysis for each of its proposed regulations that:

- (1) Will result in an annual effect on the economy of \$100 million or more;
- (2) Will result in a major effect on the general economy in terms of costs, consumer prices, or production;
- (3) Will result in a major increase in costs or prices for individual industries, levels of government, or geographic regions;

(4) Will have a substantial impact on the United States balance of trade; or

(5) The Secretary or head of the initiating office determines deserves such analysis.

b. Each draft Regulatory Analysis contains:

(1) A succinct statement of the problem and the issues that make the regulation significant;

(2) A description of the major alternative ways of dealing with the problem that were considered by the initiating office;

(3) An analysis of the economic and any other relevant consequences of each of these alternatives; and

(4) A detailed explanation of the reasons for choosing one alternative over the others.

c. A draft Regulatory Analysis addresses all salient points to the maximum extent possible. If data are lacking or there are questions about how to determine or analyze points of interest, the problem is noted in the draft Regulatory Analysis; to help elicit the necessary information during the public comment period on the advance notice or notice of proposed rulemaking, the appropriate questions are included in the advance notice or notice of proposed rulemaking.

d. The initiating office includes in each advance notice or notice of proposed rulemaking on a proposal requiring a Regulatory Analysis, an explanation of the regulatory approach being considered or proposed, a short description of the alternative approaches, and a statement of how the public may obtain a copy of the draft Regulatory Analysis for review and comment.

e. An initiating office prepares and places in the public docket for each of its proposed regulations not requiring a draft Regulatory Analysis, a draft Evaluation. This Evaluation includes an analysis of the economic consequences of the proposed regulation, quantifying, to the extent practicable, its estimated cost to the private sector, consumers, Federal, State and local governments, as well as its anticipated benefits and impacts. Judgment is exercised by the head of the initiating office so that resources and time devoted to the Evaluation reflect the importance of the proposal. The initiating office includes in each advance notice or notice of proposed rulemaking requiring an Evaluation a statement of how the public may obtain a copy of the draft Evaluation for review and comment. If the head of the initiating office determines that the expected impact is so minimal that the proposal does not warrant a full Evaluation, a statement to that effect and the basis for it is included in the proposed regulation; a separate statement is not placed in the public

docket. For a significant regulation, the Evaluation also includes a succinct statement of the issues which make the regulation significant and an analysis of any other relevant consequences.

f. The initiating office prepares a final Regulatory analysis for each final regulation that meets the criteria of paragraph 10a of this Order, otherwise, a final Evaluation, in accordance with the requirements of paragraph 10e of this Order, is prepared. The Regulatory Analysis or the Evaluation is placed in the public docket at the time of or before issuing the final regulation and the regulation is accompanied by a statement of how the public may obtain a copy of the Regulatory Analysis or the Evaluation for review.

g. An emergency regulation that otherwise would be nonsignificant is excepted from the requirements for any Evaluation. For an emergency regulation that otherwise would be significant, the initiating office prepares and places in the public docket as soon as possible after issuance of the notice or final regulation a Regulatory Analysis or Evaluation, whichever is appropriate, unless an exception is granted by the Secretary.

11. REVIEW AND REVISION OF EXISTING REGULATIONS

a. Each initiating office establishes a program for reviewing its existing regulations and revoking or revising those regulations that it determines are not achieving their intended purpose. This review follows the same procedural steps for the development of new regulations.

b. In identifying existing regulations for review and possible revocation or revision and in determining the order in which they are to be reviewed, an initiating office considers:

(1) The nature and extent of complaints or suggestions (including petitions for rulemaking) received, especially ones received from those directly or indirectly affected by the regulations;

(2) The need to simplify or clarify language, consideration should especially be given to the number of requests received for interpretations or the problems evidenced in the enforcement of the regulation;

(3) The need to eliminate overlapping and duplicative regulations;

(4) The need to eliminate conflicts and inconsistencies in its own regulations or those of other initiating offices or other agencies;

(5) The length of time since the regulations were last reviewed or evaluated.

(6) The importance and continued relevance of the problem the regulations were originally intended to solve;

(7) The burdens imposed on those directly or indirectly affected by the regulations;

(8) The degree to which technology, economic conditions or other factors have changed in the area affected by the regulation; and

(9) The number of requests received for exemption from a regulation and the number granted.

(c) Each initiating office prepares a list of the existing regulations it has selected for review and possible revocation or revision. It includes (1) a brief description of the reasons for each selection, (2) a target date for completing the review and determining the course of corrective action to be taken, and (3) the name and telephone number of a knowledgeable initiating office official who can provide additional information. The list of existing regulations selected is submitted to the Department Regulations Council through the General Counsel. It is updated as part of the initiating office's semi-annual Regulations Report and the bi-monthly supplements required under paragraph 13 of this Order. The semi-annual report includes any final action taken or determination made since the last list.

d. The General Counsel's office consolidates the initiating offices' lists of existing regulations selected for review for the Council and from that consolidation prepares a semi-annual list for publication in the FEDERAL REGISTER as part of the Department Regulations Agenda. FEDERAL REGISTER publication is for the stated purpose of sharing information with interested members of the public. Choosing to review a regulation does not indicate that it will be discarded or that it will not be enforced while under review.

12. OPPORTUNITY FOR PUBLIC PARTICIPATION

a. Initiating offices should take appropriate steps, including the following, to increase the opportunity for public participation:

(1) In addition to publishing proposals and notices of regulatory actions in the FEDERAL REGISTER, an initiating office should, in appropriate circumstances, provide a clear, concise notice to publications likely to be read by those affected, and, to the extent practical, notify interested parties directly.

(2) If the subject is unusually complex, or if there is a considerable potential for adverse effects from a failure to provide an opportunity for early public participation, the initiating office should consider supplementing the minimum rulemaking steps required by section 553 of Title 5, United States Code. For example, an advance notice of proposed rulemaking may be employed to solicit comments and suggestions on an upcoming notice of pro-

posed rulemaking or an open conference may be held at which a discussion between all interested parties would help narrow or clarify issues. However, such supplementary procedures should be used only when they will serve to clarify the issues and enhance effective public participation. They should not be used if they would delay the process of developing the regulations unless significant additional information is to be gained by the initiating office or the public.

(3) When appropriate, an initiating office may solicit views through surveys or panels.

(4) When the issues involved warrant it and time permits, an initiating office should allow time for the public to submit rebuttal to comments submitted in response to proposals.

(5) To the extent permissible, an initiating office may consider providing financial assistance to persons who lack the resources to participate meaningfully in its regulatory proceedings.

(6) An initiating office should identify, in a statement accompanying a proposed or final regulation, the nature of the research relied on to support a particular regulatory approach; the statement should clearly indicate the importance of the research in the development of the regulation; and the source material should be made available for public review by placing a copy in the public docket.

(7) As necessary, the Department, and its initiating offices, provides information and instruction through public meetings and publications, in the use of its regulatory policies and procedures, especially with respect to public participation.

b. The public is provided at least 60 days to comment on proposed significant regulations. In the few instances where the initiating office determines this is not possible, the proposal is accompanied by a brief statement of the reasons for a shorter time period.

c. The public is generally provided at least 45 days to comment on proposed nonsignificant regulations. When at least 45 days are not provided, the proposal or the regulation is accompanied by a brief statement of the reasons.

d. To the maximum extent possible, notice and an opportunity to comment on regulations should be provided to the public, even when not required by statute, if such action could reasonably be anticipated to result in the receipt of useful information. When an initiating office does not provide notice and an opportunity for the public to comment, (1) a statement of the reasons is included with the final regulation when it is published in the FEDERAL REGISTER and (2) when reasonable, the initiating office should provide notice and opportunity to comment subsequent to the final regu-

lation. This action can be taken in conjunction with a plan for evaluating the regulation after its issuance.

e. If any of the national organizations representing general purpose State and local governments (including the National Governor's Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the United States Conference of Mayors, the National Association of Counties, and the International City Management Association) notifies the department, including any of its initiating offices, that it believes a regulation included on the Department's Regulations Agenda would have major intergovernmental impact, the initiating office develops a specific plan, in conjunction with the Assistant Secretary for Governmental Affairs, for consultation with State and local governments in the development of that regulation. Such consultation includes the solicitation of comments from the above named groups, from other representative organizations and from individual State and local governments as appropriate.

In determining appropriate action, to help ensure the practicality and effectiveness of the programs, the initiating office considers the following:

(1) State and local sectors constitute the delivery mechanisms for most of the actual services the Federal Government provides;

(2) State and local sectors have concerns and expertise;

(3) Early participation by State and local officials in the planning process helps ensure broad-based support for the proposals that are eventually developed; and

(4) Early participation also ensures that priorities developed at the Federal level will work in conjunction with and not at cross-purposes to priorities at the State and local level.

Whenever a significant proposed regulation identified as having a major intergovernmental impact, is submitted to the Office of management and Budget for review or is published in the FEDERAL REGISTER, it is accompanied by a brief description of (1) how State and local governments have been consulted, (2) what the nature of the State and local comments was and (3) how the agency dealt with such comments.

13. DEPARTMENT REGULATIONS AGENDA

a. Each initiating office prepares a semi-annual Regulations Report summarizing each proposed and each final regulation that office is considering for issuance and publication in the FEDERAL REGISTER during the succeeding 12 months or such longer period as may be anticipated. This Report is submitted to the Department Regula-

tions council through the General Counsel not later than the last working days of June and December each year and supplemented with a bi-monthly updating report not later than the last working days of February, April, August, and October each year.

b. The Report specifies for each proposed and final regulation being considered for issuance and publication:

- (1) A title;
- (2) A description (including information on how any referenced document may be obtained);
- (3) The earliest expected date for a decision on whether to issue the proposed or final regulation;
- (4) The name and telephone number of a knowledgeable initiating office official who can provide additional information; and
- (5) Whether it is a significant or a nonsignificant regulation.

The Semi-Annual Regulations Report includes any final action taken since the last report.

c. For a significant regulation, the Report also briefly states:

- (1) Why it is considered significant;
- (2) The past and anticipated chronology of the development of the regulation;
- (3) The need for the regulation;
- (4) The legal basis for the action being taken; and
- (5) Whether a Regulatory Analysis is required.

d. For non-significant regulations issued routinely and frequently as part of an established body of technical requirements (such as the Federal Administration's Airspace Rules) to keep those requirements operationally current, the Report only states:

- (1) The general category of the regulations;
- (2) The identity of a contact office or official; and
- (3) An indication of the expected volume of issuance; individual regulations are not listed.

e. The General Counsel's office consolidates the initiating offices' Regulations Reports for the Council and from that consolidation prepares a semi-annual Department Regulations Agenda for publication in the FEDERAL REGISTER. FEDERAL REGISTER publication is for the stated purpose of sharing with interested members of the public the Department's preliminary expectations regarding its future regulatory actions and does not impose any binding obligation on the Department or initiating offices with regard to any specific item in the agenda or preclude regulatory action on any unspecified item.

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